

# Major Changes in the Tennessee Accessibility Act

September 19, 2005

The 104<sup>th</sup> General Assembly revised the Tennessee Accessibility Act (TAA). The most substantive change affects the codes and guidelines applicable to buildings and structures covered under the act. Until July 1, 2006 the current codes still apply. Currently the only codes usable for buildings and structures covered by the TAA are either the North Carolina State Building Code, Volume 1-C – Accessibility, 1991 with 1996 revisions (NCAC) or the CABO/ANSI A117.1 1992 edition. An important issue to make note of is that no other versions of ANSI A117.1 or NCAC are recognized by the TAA and therefore cannot be used as an accessibility code in Tennessee for any building or structure covered under the TAA.

As of July 1, 2006 all buildings covered by the TAA which are constructed, enlarged, or substantially altered or repaired must be designed to one of the following: a) The 2002 North Carolina Accessibility Code with 2004 Amendments, b) currently enforced American with Disabilities Act Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS) (whichever is applicable). The statute was revised with intent to keep Tennessee's accessibility standards in line with the standards the United States Department of Justice (USDoJ) currently enforces. TCA 68-120-204 will not permit the use of any other edition of ADAAG or UFAS not codified by the USDoJ or accessibility code other than the NCAC for any building or structure requiring review by the Tennessee State Fire Marshal's Office (SFMO). If and when the USDoJ approves the July 23, 2004 Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA-ABAG) recently released by the Access Board then it may automatically be used when designing a covered building or structure.

An important item of interest is that the 2002 NCAC with 2004 Amendments has been preliminarily certified by the USDoJ as meeting or exceeding the requirements of Title-III of the ADA. The final step in the certification process prior to formal announcement was a public hearing in Washington DC on June 20, 2005 where not one dissenting comment was recorded. Formal certification may have been already granted, but due to printing deadlines we cannot confirm that it is fully certified at this time. We do suggest that designers investigate the ADA's home page at <http://www.ada.gov> for the latest developments. To this date, the USDoJ has never failed to formally certify any code which has received preliminary certification.

The revision to the TAA provides a little less stringency for exempt local jurisdictions. Under this provision, covered buildings within exempt local jurisdictions may be designed to the same standards the SFMO uses or *"from the codes or publications of other nationally recognized agencies or organizations."* While granting a great deal of freedom of choice at the exempted jurisdiction's level, substantial potential for nonconformance to the ADA exists. Please consider the following example.

The following example takes place in an exempt jurisdiction which deviates from one of the three codes and guidelines used by the SFMO by adopting the 1998 or 2003 ICC/ANSI A117.1 standard which is permissible under the revised TAA for exempt jurisdictions. Suppose the designer employs a Limited Use/Limited Application (LULA) elevator in a Title III building requiring an accessible elevator. The implications for the local jurisdiction, building owner and designer are not good. The federal law still in effect for Title-III of the ADA is the 1991 28 CFR part 36 with 1994 revisions. Figure 22 and 4.10.9 of Appendix A in the federal law specifies minimum dimensions and configurations for accessible elevators. Title-III does not mention LULA elevators and most LULAs do not conform to the current law. It should be noted that Appendix A of the law is based on an early version of ADAAG which uses in part the 1980 ANSI A117.1. Since section 407.4 in both 1998 and 2003 ICC/ANSI A117.1 standards allow the application of LULA elevators and/or other configurations, the designer, owner, contractor, and the jurisdiction itself may have a building designed and constructed to an adopted standard which complies with the TAA but violates the federal law.

The 1998 and 2003 ICC/ANSI A117.1 standards are not the only standards or guidelines which conflict with Title-III of the ADA as it exists today. The Access Board's ADA-ABAG may in fact be final as far as the Access Board is concerned but these same guidelines are not yet applicable since the USDoJ has yet to codify the ADA-ABAG into 28 CFR part 36. The introduction of the ADA-ABAG offers guidance to this subtlety.

Exempt jurisdictions after July 1, 2006 may use any version of ADAAG or UFAS since they too will meet TAA's "*from the codes or publications of other nationally recognized agencies or organizations.*" provisions. If this possibility is exercised, then the same potential for ADA Title-III noncompliance exists that plagued the example above. The ADA-ABAG also has elevator arrangements which are incompliant with the currently enforced Title III. Building and structures which must be submitted to the SFMO will be able to use the new ADAAG only after it becomes "currently enforced".

Many registrants quietly wrestle with the currently enforced ADAAG and UFAS and in some ways the ADA itself, because of the word "reasonable" which tends to place the onus on the designer. When the NCAC is fully certified by the USDoJ as meeting or exceeding ADA Title-III requirements, designers will have an established, illustrated, prescriptive code available to them under the TAA. Certification of a code has other benefits as well; "At any enforcement proceeding under title III of the Act, such certification shall be rebuttable evidence that such State law or local ordinance does meet the minimum requirements of title III. [28 CFR Part 36 602 General rule]

The SFMO anticipates most all projects submitted to it will be designed to the new NCAC rather than the currently enforced ADAAG or UFAS largely due to a) scoping issues associated with the guidelines and b) the historical preference for the existing NCHC and USDoJ certification of the NCAC. To this end the SFMO in cooperation with Vaughn and Melton with the assistance of the A&E Board together are currently working on developing a week long class specifically on the USDoJ certified NCAC sometime prior to July 1 2006. The seminar will be held in the Nashville area and will feature an individual instrumental in NCAC's certification. Continuing education hours will likely be available. The specifics are not yet established. Copies of the NCAC may be obtained from the North Carolina Department of Insurance, Office of the State Fire Marshal which can be contacted through <http://www.ncbuildingcodes.com/>. Designers may also want to go to <http://www.huduser.org/publications/destech/fairhousing.html> to obtain a currently applicable Fair Housing Act Design Manual prior to the seminar.